

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-3034**September Term 2010****1:05-cr-00386-ESH-1****Filed On:** March 3, 2011

United States of America,

Appellee

v.

Antoine Jones,

Appellant

Consolidated with 08-3030**BEFORE:** Ginsburg, Tatel, and Griffith, Circuit Judges

ORDER

Upon consideration of appellant's motions for release pending appeal, the response thereto, and the reply; appellant's motion for leave to supplement the motions for release and the lodged declaration; appellant's motion for leave to file a supplemental motion for release, the lodged supplemental motion and the opposition to the motion for leave to file; and appellee's motion to extend the stay of the mandate, it is

ORDERED that the motion for leave to supplement and motion for leave to file a supplemental motion be granted. The Clerk is directed to file the lodged documents. It is

FURTHER ORDERED that the motions for release and the supplemental motion for release pending appeal be denied without prejudice. As the government concedes, the absence of a mandate is not an impediment to the district court's jurisdiction to consider a motion under 18 U.S.C. § 3145(c) for release pending appeal. *See United States v. Garcia*, 340 F.3d 1013, 1014 n.1 (9th Cir. 2003). Moreover, that a defendant cannot obtain release under 18 U.S.C. § 3143(b) does not foreclose his seeking release under 18 U.S.C. § 3145(c) pending appeal. Because the district court retains jurisdiction to consider a motion for release, Jones may file a renewed motion for release in that court. Finally, lest we imply otherwise, we note it will be necessary, in addressing any renewed motion for release, for the district court to decide whether it is appropriate to treat Jones (i) pursuant to 18 U.S.C. § 3143(b)(2) and § 3145(c), as a defendant found guilty and seeking appeal, (ii) pursuant to § 3142, as a defendant awaiting a new trial, or (iii) pursuant to § 3143(c), as a defendant awaiting a government "appeal" in the form of a petition for writ of certiorari. It is

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FURTHER ORDERED that the motion to extend the stay of the mandate be granted. The Clerk is directed to withhold the mandate through March 18, 2011. If, within the period of the stay, appellee notifies the Clerk in writing that a petition for writ of certiorari has been filed, the Clerk is directed to withhold issuance of the mandate pending the Supreme Court's final disposition. See Fed. R. App. P. 41(d)(2)(B); D.C. Cir. Rule 41(a)(2).

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Michael C. McGrail

Deputy Clerk